

FILED Judge Rothstein
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AT SEATTLE
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Plaintiff in
Intervention,

v.

MARINE POWER AND EQUIPMENT COMPANY
INC., and WFI INDUSTRIES, INC.,

Defendants.

NO. C85-382R

PARTIAL CONSENT DECREE

WHEREAS, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this case on March 8, 1985, under Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and the Refuse Act, 33 U.S.C. § 407, alleging that the defendants illegally discharged pollutants and refuse

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1 from ship repair facilities into the Duwamish River and Lake
2 Union in Seattle, Washington; and

3 WHEREAS, the State of Washington, Department of Ecology
4 ("WDOE"), as plaintiff in intervention, has alleged that
5 defendants have violated Section 301(a) of the Clean Water Act,
6 33 U.S.C. § 1311(a), the Refuse Act, 33 U.S.C. § 407, and RCW
7 90.48.080 and 90.48.160; and

8 WHEREAS, the United States and the defendants agreed,
9 pursuant to a Temporary Restraining Order dated March 8, 1985,
10 and remaining in effect until April 8, 1985, that the defendants
11 shall not discharge without a permit into the Duwamish River and
12 Lake Union spent sandblasting abrasives, chipped paint, rust and
13 other debris and shall conduct all of their operations at their
14 Duwamish River and Lake Union facilities in compliance with the
15 Clean Water Act and the Refuse Act; and

16 WHEREAS, defendants have agreed and the Court has ordered an
17 extension of the terms of the Temporary Restraining Order entered
18 by the Court on March 8, 1985, such extension remaining in effect
19 until October 8, 1985, or until the Partial Consent Decree is
20 entered by the Court, or until a National Pollutant Discharge
21 Elimination System ("NPDES") permit is issued to defendants by
22 WDOE, whichever comes earlier; and

23 WHEREAS, the United States has acknowledged, in its publicly
24 filed Memorandum in Opposition to Defendants' Motion for Return
25 of Seized Property in No. CR85-019M-02, the existence of an
26 ongoing criminal investigation concerning the same conduct

1 alleged in the civil complaint herein, and both plaintiffs and
2 the defendants recognize that the public interest is best served
3 by the entry of this Partial Consent Decree and this partial
4 settlement avoids difficult litigation and serious discovery
5 problems for all parties during the simultaneous progression of a
6 criminal investigation and this civil case; and

7 WHEREAS, the plaintiffs and the defendants have agreed to
8 stipulate to an order whereby all further proceedings and all
9 discovery conducted herein pursuant to the Federal Rules of Civil
10 Procedure shall be stayed for six (6) months from the date of
11 entry of this Order; provided, however, that defendants may
12 engage in depositions and other discovery where reasonably
13 necessary in order to preserve evidence or testimony prior to
14 expiration of the stay, as set forth in the stipulation regarding
15 discovery; and

16 WHEREAS, the plaintiffs and the defendants, by their
17 undersigned representatives, have each agreed to the making of
18 this Partial Consent Decree:

19 NOW, THEREFORE, it is Ordered as follows:

20
21 I

22 JURISDICTION AND SIGNATORIES

23 Each signatory submits itself to the jurisdiction of the
24 Court for all matters relating to this Partial Consent Decree and
25 certifies that he or she is fully authorized to enter into the
26

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1 terms and conditions of this Partial Consent Decree and to
2 legally bind the party he or she represents to this document.

4 II

5 CESSATION OF DISCHARGES

6 Defendants shall not, unless authorized by NPDES permit
7 (where required), discharge pollutants from the following sources
8 at their Duwamish River facility at 6701 Fox Avenue and their
9 Lake Union facility at 1441 North Northlake Way into the Duwamish
10 River and Lake Union:

- 11 1. the submersible docks at the Duwamish River and Lake
12 Union facilities;
- 13 2. the water caster at the Duwamish River facility;
- 14 3. the water washer at the Duwamish River facility;
- 15 4. the synchrolift dock at the Duwamish River facility; and
- 16 5. all pipes and hoses which discharge pollutants into the
Duwamish River or Lake Union.

17 Discharges from the submersible dry docks, the water caster,
18 the synchrolift and the water washer will be prevented or
19 minimized by the use of the following Best Management Practices
20 ("BMPs"):

- 21
22 1. Control of Large Solid Materials. Scrap metal, wood
23 and plastic, miscellaneous trash such as paper and
24 glass, industrial scrap and waste such as insulation,
25 welding rods, packaging, etc., that would float or
26

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1 otherwise be released to the water shall be removed
2 from the drydock floor prior to flooding or sinking;
3

- 4 2. Control of Blasting Debris. Cleanup of spent paint and
5 abrasive shall be undertaken as part of the repair or
6 production activities to prevent their entry into
7 drainage systems. Mechanical cleanup may be
8 accomplished by mechanical sweepers, front loaders,
9 vacuum cleaners or other innovative equipment. Manual
10 methods include the use of shovels and brooms.
11 Innovations and procedures which improve the
12 effectiveness of clean-up operations shall be adapted
13 where they are feasible and can be demonstrated as
14 preventing the discharge of solids. Those portions of
15 the drydock floor which are reasonably accessible shall
16 be scraped or broomed clean using shovels, mechanical
17 loaders, mechanical sweepers, vacuum cleaners or brooms
18 to remove spent abrasive prior to flooding.
19

20 After a vessel has been removed from the drydock and
21 the dock has been raised for repositioning of the keel
22 and bilge blocks, the remaining areas of the floor
23 which were previously inaccessible shall be cleaned by
24 scraping or broom cleaning prior to the introduction
25 of another vessel into the drydock.
26

- 1 3. Oil, Grease, and Fuel Spills. During the drydocked
2 period, oil, grease, or fuel spills shall be prevented
3 from reaching drainage systems and from discharge with
4 drainage water. Cleanup shall be carried out promptly
5 after an oil or grease spill is detected.
6
- 7 4. Paint and Solvent Spills. Paint and solvent spills
8 shall be treated as oil spills and segregated from
9 discharge water. Spills shall be contained until
10 cleanup is complete. Mixing of paint shall be carried
11 out in locations and under conditions such that spills
12 shall be prevented from entering drainage systems. and
13 discharging with the drainage water.
14
- 15 5. Segregation of Waste Water Flows in Drydocks. The
16 various process wastewater streams shall be segregated
17 from sanitary wastes.
18
- 19 6. Contact Between Water and Debris. Shipboard cooling
20 and process water shall be directed so as to minimize
21 contact with spent abrasive and paint and other
22 debris. Contact of spent abrasive and paint by water
23 can be reduced by proper segregation and control of
24 wastewater streams. When debris is present, hosing of
25 the dock should be minimized. When hosing is used as a
26 removal method, appropriate methods should be

1 incorporated to prevent accumulation of debris in
2 drainage systems and to prevent its discharge with
3 wastewater.
4

- 5 7. Maintenance of Hoses, Soil Chutes, and Piping. Leaking
6 connections, valves, pipes, hoses, and soil chutes
7 carrying either water or wastewater shall be replaced
8 or repaired immediately. Soil chute and hose
9 connections to the vessel and to receiving lines or
10 containers shall be tightly connected and as leak-free
11 as practicable.
12

- 13 8. Storage and Disposal of Spent Sandblasting Debris.
14 Spent sandblasting debris shall be stored in a manner
15 that will prevent the entry of the debris (or leachate
16 from the debris) into the Duwamish River or Lake
17 Union. Prior to disposal, the debris shall be approved
18 for disposal by WDOE or the Seattle-King County
19 Department of Public Health under the appropriate
20 regulations.
21

- 22 9. Stormwater Management Runoff, Storm Drains and Bilge
23 Water. The yard area shall be cleaned on a regular
24 basis (and before water caster operation) to minimize
25 the possibility that runoff will carry sandblasting
26 material or other debris into receiving waters or storm

1 drains. Cleanup of areas contributing runoff shall
2 consist of mechanical or manual methods to sweep up and
3 collect the debris. Collected sandblasting debris
4 shall be stored with the spent grit.

5
6 The sediment traps in the storm drainage systems shall
7 be inspected on a frequent basis and cleaned as
8 necessary to ensure collection of solids entering the
9 drainage system.

10
11 All bilge water discharges shall not exceed an oil and
12 grease concentration of ten (10) milligrams per liter
13 and shall not cause any visible sheen in the receiving
14 waters.

15
16 It shall constitute an affirmative defense to an action to
17 enforce this Decree if discharges of pollutants in violation of
18 the terms of this Decree are necessary to avoid imminent harm to
19 human life or imminent and severe property damage.

20
21 III

22 PERMIT APPLICATION

23 No later than ninety (90) days after the entry of this
24 Partial Consent Decree, defendants shall submit an application to
25 the WDOE for NPDES permits authorizing the drydocks and any point
26 source discharges emanating from their Fox Avenue and North

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1 Northlake Way facilities. WDOE agrees to use its best efforts
2 to: (1) process all NPDES permit applications submitted by
3 defendants; and (2) to issue a final decision on such
4 applications within six (6) months from the date of such
5 application or applications.
6

7 IV

8 NOTIFICATION

9 Until the defendants obtain the NPDES permits required by
10 law, they shall notify EPA by telephone at (206) 442-1644 and
11 WDOE at (206) 885-1900 at least three hours in advance of all
12 impending instances of dry dock or synchrolift flooding and water
13 washing or water caster operation. For anticipated operations
14 expected to occur after 5:00 p.m. and before 8:00 a.m. or on
15 weekends or holidays, the defendants shall notify the agencies
16 before 4:30 p.m. on the last normal working day before the
17 operation. In the event of an unexpected emergency that
18 necessitates an immediate lowering of a dock, EPA and WDOE shall
19 be notified as soon as practicable.
20

21 V

22 ACCESS

23 Until such time as defendants may be granted NPDES permits
24 authorizing the discharges at issue, EPA and WDOE shall have
25 access to the defendants' Fox Avenue and Lake Union facilities
26 for the purpose of inspecting any operations to which the BMPs in

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1 Section II are applicable. Such access may be without notice
2 during normal working hours on Monday through Friday from
3 8:00 a.m. to 5:00 p.m., and also during such times as operations
4 are occurring for which defendants have or should have given
5 notice pursuant to Section IV herein. Prior to admittance, each
6 WDOE or EPA representative shall show his or her credentials to
7 the yard manager and shall log in his or her name and employee
8 identification number. After issuance of any NPDES permit,
9 defendants shall comply with the access provisions of that permit.
10

11 VI

12 COMPLIANCE WITH ALL LAWS

13 Notwithstanding the provisions of this Partial Consent
14 Decree, defendants shall comply with all applicable Federal and
15 State laws and regulations. EPA and WDOE retain full enforcement
16 authority, including the right to seek penalties for past or
17 future violations of Federal or State law or regulations.
18

19 VII

20 MODIFICATION

21 In the event that any party is of the opinion that changed
22 conditions of law or fact require that this Partial Consent
23 Decree be altered, modified, or set aside, such party may file a
24 motion before this Court for modification.
25
26

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VIII

TERMINATION

If defendants receive an NPDES permit from WDOE, the provisions of the permit shall supplant the BMPs, monitoring and notification requirements contained in the Partial Consent Decree as of the effective date of the permit. To ensure compliance with the Clean Water Act and the conditions of any permit issued by WDOE, the Court shall retain jurisdiction for a period of eighteen (18) months from the date of permit issuance but no later than two (2) years after entry of this Partial Consent Decree. In the event that WDOE denies an NPDES permit for any particular discharge of pollutants from a point source, that discharge shall cease upon permit denial, notwithstanding any provision of this Partial Consent Decree.

IX

CONDITIONAL CONSENT OF THE UNITED STATES

Pursuant to Department of Justice policy at 28 C.F.R. § 50.7, the United States reserves the right to withdraw its consent to the proposed judgment if public comments indicate that the proposed judgment is inappropriate, improper, or inadequate.

X

EFFECT OF PARTIAL CONSENT DECREE

The plaintiffs and the defendants agree that, by signing this Partial Consent Decree or by complying with its terms,

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1 including the submission of permit applications, defendants do
2 not admit in any way that they have violated the Clean Water Act,
3 Refuse Act, or any other law or regulation; that the defendants
4 do not waive any claims or defenses to the present action, and
5 they may assert those claims or defenses in this or any other
6 administrative, civil, or criminal proceeding; and that this
7 Partial Consent Decree does not preclude the WDOE from issuing an
8 NPDES permit on terms or conditions that are different from the
9 conditions or BMPs imposed by this Partial Consent Decree.


11 XI

12 RETENTION OF JURISDICTION

13 This Court shall retain jurisdiction over this matter for
14 the purpose of enabling any party to this Decree to apply to the
15 Court for such orders as may be necessary or appropriate to
16 interpret, implement or enforce the terms of this Decree, or for
17 any further relief that the interests of justice may require.

18 FOR THE UNITED STATES OF AMERICA

19 
20 _____
21 F. HENRY HABICHT, II
22 Assistant Attorney General
23 U. S. Department of Justice
24 Land and Natural Resources Division
25 Washington, D.C.

26 

27 GENE S. ANDERSON
28 United States Attorney
29 Western District of Washington

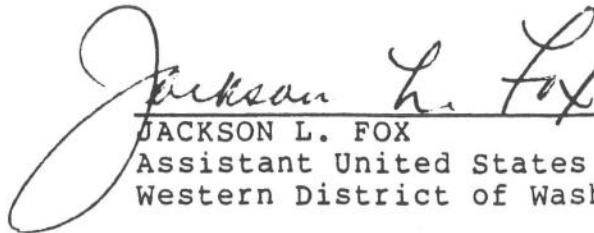
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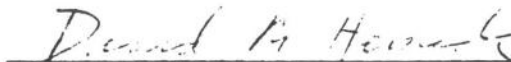
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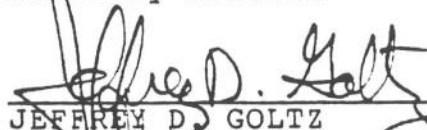


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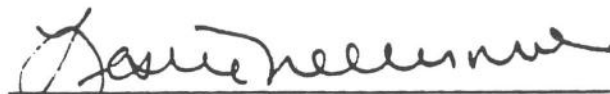
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FOR MARINE POWER AND EQUIPMENT
COMPANY, INC., AND WFI INDUSTRIES, INC.



RICHARD WOECK, President
Marine Power and Equipment Company, Inc.
and WFI Industries Inc.

DATED and entered this ____ day of _____, 1985.

UNITED STATES DISTRICT JUDGE

UNITED STATES ATTORNEY

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